

Debunking The Myths Of Corporate Recoveries Programs

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As Legal departments innovate proactive methods to support company goals, tough choices arise between what is urgent and important, and what should wait. We believe discussion about recovery programs should be a top priority, deferral being a costly mistake. Latent recoveries located throughout any business are inefficiencies waiting to be monetized.

Installing a disciplined Corporate Recoveries program can unlock significant value for the company. A disciplined and well-communicated CAAR program may be the best way for the legal Department to demonstrate strategic inventiveness while driving revenue to the bottom-line.

Companies should not hold back from capturing the full available benefits because they falsely assume that a Recoveries program requires large resources or aggressive litigation, or harbor other misconceptions.

Debunking The Myths:

Myth No. 1: Corporate recoveries programs encourage serial litigation

Although most Recovery opportunities could become a lawsuit, CAAR's focus is on resolution, and not on litigation. The Legal Department is encouraged to deploy a spectrum of efficient methods to hold trading partners accountable, resolve disputes, license IP, recover duties, etc., all directed to bringing in MONEY. Early case assessment, ADR, and other business resolutions processes are frequent techniques. Litigation is an important backstop, but only where required.

Myth No. 2: Corporate Recoveries Programs do not respect trading relationships with suppliers and other third parties

A Corporate Affirmative Asset Recoveries program may require that a company address its trading partners – even possibly customers – to seek compensation for their substandard performance. One might expect the resulting friction could threaten the business relationship.

There is strong reason to believe that the opposite often is true. In many cases, holding your suppliers, contractors, service providers, franchisees, licensees, customers and all other trading partners accountable will clarify expectations, enhance communication going forward, and reduce future problems.

Myth No. 3: Corporate Recoveries Programs require significant resources

Corporate Recovery programs are a relatively "light lift", requiring a programmatic focus on recoveries rather than a devotion of resources. In-house lawyers should engage internal stakeholders in order to promote sophisticated application of affirmative recoveries disciplines. Internal dialogue with management will garner support for the program and, importantly, will identify potential recoveries that may be pursued.

Myth No. 4: Corporate Recoveries Programs put a strain on cash conservation

To the contrary, Corporate Recoveries programs focus on generating value. Some consulting or outside counsel fees may be necessary, but the goal is to increase cash. The Recoveries program captures cash value lurking unseen.

Myth No. 5: Corporate Recoveries Programs have not been implemented successfully by major U.S. corporations

Fortune 100 companies have been an incubator for Recoveries. Over the course of ten years DuPont Legal, one of the pioneers in Corporate Recoveries, produced more than a \$3.6 billion legally-assisted recoveries as validated by its Finance function.

Myth No. 6: “Our company is unlikely to have lucrative opportunities.”

Most companies probably pursue an occasional ad hoc opportunity to profitably reclaim value; however, many opportunities routinely go unrecognized or ignored because no process exists to reveal them.

Re-orienting the Legal Department and the company at large to be more vigilant to find opportunities to extract value that is due can amplify the Legal Department’s reputation for requiring reasonable resolution – and ultimately enhancing Legal’s profile internally and externally.

What is certainly not a myth is that Corporate Asset Affirmative Recovery Programs are not going to be appropriate for every company. However, thousands of companies and legal departments are misinformed and unnecessarily deterred from properly evaluating the merits of a recoveries program.

Diamond McCarthy’s CAAR advisory team has been assembled for the very purpose of helping in-house counsel better understand how to develop and scale a recoveries program and will work with your team to identify how the legal department can plug the leakage and drive value to the business.

Please contact our team to learn more.

Richard Janvey – Partner & Chair of CAAR

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Related Practices

- Corporate Asset Affirmative Recovery Practice